REMARKS

Reconsideration of the present application is respectfully requested.

Applicants originally presented claims 1-9 for examination, with claims 1 and 4 being in independent form.

In the present Amendment, Applicants have amended claim 4 and have cancelled claims 1-3 so that claims 4-9 are currently pending, with claim 4 being in independent form.

In the Office Action of January 16, 2009, the Examiner rejected claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent 6,528,587. Applicants respectfully traverse this rejection for the reason that the claimed invention is not obvious over claims 1-17 of U.S. Patent 6,528,587 for the reasons that follow under the rejection over 35 U.S. C.103.

In the Office Action of January 21, 2009, the Examiner rejected claims 4-9 under 35 U.S. C. 1112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The objections of the Examiner concerned certain limitations in Claim 4. Claim 4 has been amended and it is believed that these amendments address these concerns such that this rejection is now moot.

In the Office Action of January 21, 2009, the Examiner rejects claims 1-9 as being unpatentable over Robert et al (U.S. Patent Application Publication No. 2001/0053821), now U.S. Patent No. 6,528,587 used herein for reference (hereafter referred to as Robert) and Dupont et al (US 5,101,064) (hereafter referred to as Dupont).

The Examiner indicates on page 7 of the Office Action that "Robert is silent regarding the use of glycolised polyester such as PETG as the polyester composition to be adhered with the tie layer composition recited.

35 U.S.C. § 103 requires that the prior art teach or at least suggest each and every feature of the claimed invention. See In re Wada and Murphy, Appeal 2007-3733, citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). The use of a glycolised polyester in combination component (A) of the aforesaid claims is not taught by Robert and/or by Dupont.

The Examiner refers to the Dupont patent for the proposition that PET and PETG are commonly used in making bottles. (Col. 1, lines 34-39). Applicants do not dispute that PET and PETG have been used in the general art to make bottles. However, there is no teaching or suggestion from Dupont or Robert to use a glycolised polyester such as PETG as the polyester

composition to be adhered with the tie layer composition claimed. There is also no motivation in the art to combine the teachings of Robert and Dupont since the prior art does not suggest or provide any direction towards the use of such a glycolised polyester in combination with adherence to a tie layer in the structure claimed.

The skilled person would have had no reason to modify Robert or Dupont to prepare a multilayer structure such as that claimed or to expect any advantage over the prior art in doing so. There is no disclosure or suggestion in either of these references that would have pointed to the desirability of making this modification. There is also no suggestion in the art that better transparency of the end use article would result or that better adhesion would result.

In view of the foregoing, Applicants submit that independent claims 4 is patentable over the prior art references of record. Further, while the dependent claims are believed to recite additional patentable features, these claims should also be allowable as being dependent on a patentable independent claim.

In conclusion, Applicants believe the present Application to be in condition for allowance. Accordingly, the Examiner is respectfully requested to reconsider the rejections, enter the above Amendment, remove all rejections, and pass the Application to issuance.

Respectfully submitted,

/B. J. Boshears/

B. J. Boshears
Registration No. 33,864

Eastman Chemical Company
P.O. Box 511
Kingsport, Tennessee 37662
Phone: (423) 229-6333
FAX: (423) 229-1239

July 16, 2009
Date